

Rule 8, Ariz. R. Crim. P. – Speedy trial

STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS ON STATUTE OF LIMITATIONS GROUNDS

Prosecutions for felonies other than murder must be commenced within seven years after the State knew, or should have known, about the offenses.

The State of Arizona, by and through undersigned counsel, in response to the defendant's Motion to Dismiss, asks this Court to deny the motion for the reasons explained in the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

The defendant is charged with the serious crimes of three counts of Sexual Conduct with a Minor, Class 2 Felonies and Dangerous Crimes Against Children (Counts 1, 3, and 4); and four counts of Sexual Conduct with a Minor, Class 6 Felonies (Counts 2, 5, 6, and 7). The chart below delineates each count, the victim, the date of crime, and the date each victim reported the sexual conduct to the police.

Count	Victim	Date of Crime	Date Reported
1	RL	November 1 - 30, 1985	12-17-97
2	EB	March 1 - October 31, 1991	10-20-97
3	AF	January 1 - May 1, 1991	12-17-97
4	AF	May 1 - August 31, 1991	12-17-97
5	AF	January 1 - October 31, 1994	12-17-97

Count	Victim	Date of Crime	Date Reported
6	DV	January 1 - December 31, 1997	1-13-98
7	DV	December 27, 1997	1-13-98

The first disclosure to the police was on October 20, 1997 and the last disclosure to the police was on January 13, 1998. The defendant was indicted eight days after the last disclosure, on January 21, 1998.

LAW:

A.R.S. § 13-107, Arizona's statute of limitations, states in part.

A. A prosecution for any homicide, any offense listed in title 13, chapter 14 or chapter 35.1 that is a class 2 felony, any violent sexual assault pursuant to § 13-1423, any misuse of public monies or a felony involving falsification of public records or any attempt to commit an offense listed in this subsection may be commenced at any time.

B. Except as otherwise provided in this section, prosecutions for other offenses must be commenced within the following periods **after actual discovery by the state** or the political subdivision having jurisdiction of the offense or **discovery by the state** or the political subdivision **that should have occurred with the exercise of reasonable diligence**, whichever first occurs:

1. For a class 2 through a class 6 felony, seven years.

A.R.S. § 13-107(B)(1) [emphasis added].

Although the crimes occurred more than seven years before the indictment was issued, the State was not aware of the crimes until the victims reported the crimes to the police, between October 20, 1997 and January 13, 1998. Once the State actually discovered the crimes, the State took the case to the grand jury just a week after the last disclosure. The charges were filed well within the seven-year limitation for commencing

prosecution. The State has jurisdiction over the defendant's crimes and the defendant's motion is baseless.

The defendant further alleges insufficiency of the indictment. But defense counsel has received a copy of the indictment, which is sufficient as a matter of law. Defense counsel has received copies of all discovery received by the State, including police reports and taped interviews. [Exhibits "A" and "B."] Defense counsel is also able to obtain a copy of the grand jury transcript. All these documents provide sufficient information and more than enough specifics with which the defendant can prepare a defense to the charges.

CONCLUSION:

For the foregoing reasons, the State respectfully requests this Court to deny the Defendant's Motion to Dismiss.